IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
NOTICE OF MOTION NO.380 OF 2006
IN
APPEAL (L) NO.67OF 2006
IN
NOTICE OF MOTION NO.829 OF 2004
IN
SUIT NO.497 OF 2004

Madhukar Chatrabhuj Ashar and others. ..Appellants
v/s.
Kamal Biharilal Wadhwa and another. .. Respondents

Mr.Snehal Shah i/by Mr.Amit Shroff for the appellants.

Mr.K.D.Shah for the respondent No.1.

Mr.A.K.Chauhan for the respondent No.2.

CORAM : R.M. LODHA &
ANOOP V.MOHTA, JJ.

DATED : 21ST FEBRUARY, 2006.

P.C.

The appeal suffers from delay of 1 year and 29 days and therefore, by means of this notice of motion, the appellants pray for condonation of delay. The order impugned in the appeal is dated 2nd December, 2004. It is stated in the affidavit in support of the notice of motion that initially, the notice of motion was taken out on 24th December, 2004 for recalling the order dated 2nd December, 2004 passed in notice of motion No.829 of 2004. However, it transpired later on that the notice of motion taken out by the appellants was not a proper remedy and hence, the said notice of motion was withdrawn on 20th January, 2006 and the present appeal was filed on 1st February, 2006.

2. The learned counsel for the respondents opposing the notice of motion urged that the notice of motion was withdrawn unconditionally and

therefore, the time during which the said notice of motion remained pending does not deserve to be excluded. According to the learned counsel for the respondents, delay of 1 year 29 days is too long and the said delay is not sufficiently explained.

3. We considered the submissions of the learned counsel for the parties.

4. The fact that the appellants took out notice of motion on 24th December, 2004 for recalling the order dated 2nd December, 2004 that is impugned in the present appeal and the said notice of motion was withdrawn on 20th January, 2006 is not in dispute. There is nothing on record to show that the notice of motion taken out by the appellants for reconsideration of the notice of motion and recalling the order dated 2nd December, 2004 was not bonafide. In our considered view, the delay of 1 year 29 days is explained by sufficient cause and the same deserves to be condoned. Order accordingly.

5. Office is directed to process the appeal and post it for admission as soon as numbered. The appellants shall be at liberty to apply for interim relief by way of separate notice of motion.

(R.M.LODHA, J.)

(ANOOP V. MOHTA, J.)